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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,445	07/17/2003	Menachem Levanoni	YOR920000590US2	9176

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EXAMINER	
PHAM, HUNG Q	
ART UNIT	**PAPER NUMBER**
2168	

DATE MAILED: 02/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/620,445	LEVANONI ET AL.	
	Examiner	Art Unit	
	HUNG Q. PHAM	2168	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 September 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3,5,8-11,13,14 and 16-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3,5,8-11,13,14 and 16-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

- Applicant's arguments with respect to the rejection of claims 1, 3, 5, 9-11, 13, 17 and 19-21 under 35 U.S.C. § 112, first paragraph, have been fully considered and are persuasive. The rejection under 35 U.S.C. § 112 of theses claims has been withdrawn.

- Applicant's arguments with respect to the double patenting rejection under 35 U.S.C. § 101 have been fully considered. The double patenting rejection under 35 U.S.C. § 101 has been withdrawn. However, an obviousness-type double patenting will be detailed as below.

- Applicant's arguments with respect to the rejection under 35 U.S.C. § 102 and 103 of claims 1, 3, 5, 8-11, 13, 14 and 16-24 have been fully considered and are persuasive. The rejection under 35 U.S.C. § 102 and 103 of claims 1, 3, 5, 8-11, 13, 14 and 16-24 has been withdrawn.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re

Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 9, 10 and 13 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 3, 12 and 13 of U.S. Patent No. 6,732,099 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other.

As set forth in MPEP 804 II (B):

> Any obviousness-type double patenting rejection should make clear:
>
> (A) The differences between the inventions defined by the conflicting claims — a claim in the patent compared to a claim in the application; and
>
> (B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim **>at issue would have been< an obvious variation of the invention defined in a claim in the patent.
>
> When considering whether the invention defined in a claim of an application *>would have been< an obvious variation of the invention defined in the claim of a patent, the disclosure of the patent may not be used as prior art. > *General Foods Corp. v. Studiengesellschaft Kohle mbH*, 972 F.2d 1272, 1279, 23 USPQ2d 1839, 1846 (Fed. Cir. 1992).< This does not mean that one is precluded from all use of the patent disclosure.
>
> The specification can * be used as a dictionary to learn the meaning of a term in the patent claim. **> *Toro Co. v. White Consol. Indus., Inc.*, 199 F.3d 1295, 1299, 53 USPQ2d 1065, 1067 (Fed. Cir. 1999)("[W]ords in patent claims are given their ordinary meaning in the usage of the field of the invention, unless the text of the patent makes clear that a word was used with a special meaning."); *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1250, 48 USPQ2d 1117, 1122 (Fed. Cir. 1998) ("Where there are several common meanings for a claim term, the patent disclosure serves to point away from the improper meanings and toward the proper meanings."). See also MPEP § 2111.01.< Further, those portions of the specification which provide support for the patent claims may also be examined and considered when addressing the issue of whether a claim in the application defines an obvious variation of an invention claimed in the patent. *In re Vogel*, 422 F.2d 438, 441-42, 164 USPQ 619, 622 (CCPA 1970). The court in *Vogel* recognized "that it is most difficult, if not meaningless, to try to say what is or is not an obvious variation of a claim," but that one can judge whether or not the invention claimed in an application is an obvious variation of an embodiment disclosed in the patent which provides support for the patent claim. According to the court, one must first "determine how much of the patent disclosure pertains to the invention claimed in the patent" because only "[t]his portion of the specification supports the patent claims and may be considered." The court pointed out that "this use of the disclosure is not in contravention of the cases forbidding its use as prior art, nor is it applying the patent as a reference under 35 U.S.C. 103, since only the disclosure of the invention claimed in the patent may be examined."

As specified in both of the Application's Specification and 6,732,099 B1, the data mining algorithm can comprehend *demand features, e.g., wherein a demand feature for say, men's shirts, may include shirt style, size, color, current local inventory, expected demand by week, as well as the specific region*

in which this particular demand was actualized. Thus, ***product stockpile information*** as in the claims of the current application and ***distribution center information*** of USP 6,732,099 have the same *current local inventory* information includes *shirt style, size, color* for data mining process.

The chart below is to compare claim 1 of the application and claims 1, 2, 3, 12 and 13 of USP 6,732,099 B1.

APPLICATION	**6,732,099 B1**
1. A computer method comprising: providing a demand database comprising a compendium of individual demand history; providing a supply database comprising a compendium of at least one of product stockpile management solutions, product stockpile information, and product stockpile diagnostics; employing a data mining for interrogating said demand database and said supply database for generating an output data stream, said output data stream correlating a demand problem with a supply solution; updating said demand database and said supply database; and refining the data mining technique in cognizance of pattern changes embedded in said demand database and said supply database as a consequence of updating said demand database and said supply database.	1. A computer method comprising: providing a demand database comprising a compendium of individual demand history; providing a distribution database comprising a compendium of at least one of distribution center management solutions, distribution center information, and distribution center diagnostics; and employing a data mining technique for interrogating said demand and distribution databases, and generating an output data stream, said output data stream correlating a demand problem with a distribution solution. 2. A method according to claim 1, further comprising: updating the demand database. 3. A method according to claim 1, further comprising: updating the distribution database. 12. A method according to claim 2, further comprising: refining said data mining technique in cognizance of pattern changes embedded in each database as a consequence of said updating the demand database. 13. A method according to claim 3, further comprising: refining said data mining technique in cognizance of pattern changes embedded in each database as a consequence of said updating the distribution database.

As seen, claim 1 recites both of *demand database* and *supply database* are updated and data mining technique is refined based the updating of both of *demand database* and *supply database*. Referring to USP 6,732,099, if claims 2, 3, 12 and 13 are incorporated into claim 1, obviously, both of *demand database* and *supply database* are updated and data mining technique is refined as a consequence of both of *demand database* and *supply database*.

Regarding claims 9, 10 and 13, obviously, the computer method of USP 6,732,099 could be implemented by *a program storage device readable by machine tangibly embodying a program of instructions executable by the machine*, by *a computer*, or by *a management system*.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUNG Q. PHAM whose telephone number is 571-272-4040. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JEFFREY A. GAFFIN can be reached on 571-272-4146. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HUNG Q PHAM
Examiner
Art Unit 2168

January 26, 2006